Nov 22 1869

Assigned to Swayne

Jas. Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~476.~~ 577

THE STEAMER DANIEL BALL; BYRON D. BALL AND JESSE GANOE, CLAIMANTS, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

Affirmed

FILED JUNE 28, 1869.

Copy

Nov 22 1869

Joshua Gale

SUPREME COURT OF THE UNITED STATES.

No. 476.

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1 To the honorable Supreme Court of the United States of America.

THE UNITED STATES
v.
THE STEAMER DANIEL BALL, and Byron D. Ball, & Jesse Ganoe, claimants and respondents.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Isaac H. Parrish, clerk of the circuit court of the United States for the sixth judicial circuit and western district, do hereby certify to the honorable Supreme Court that the records and proceedings in said cause in said circuit court are as follows:

2

3 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

District court of the United States for the western district of Michigan, of the October term, A. D. 1867.

To the Hon. Solomon L. Withey, judge of said court:

Be it remembered that on this 2d day of April, A. D. 1868, before the Hon. Solomon L. Withy, judge as aforesaid, comes, in his own proper person, Augustus D. Griswold, district attorney of the United States for the said western district of Michigan, in behalf of the United States of America, and gives the said judge to understand and be informed—

First. That on the 30th day of March, A. D. 1868, the steamer Daniel Ball, being of one hundred and twenty-three and $\frac{32}{100}$ tons burthen, was employed in navigating Grand River, in the State of Michigan, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did, at the time and place last aforesaid, transport on said river, between the cities aforesaid, goods, wares,
4 merchandize, and passengers, without having first obtained from the proper officer a licence under the then existing laws of the United States.

Second. That on the day and year last aforesaid, the said steamer Daniel Ball was employed in navigating Grand River, in the State of Michigan, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did, at the time and place last aforesaid, transport goods, wares, merchandize, and passengers on said river, between the places aforesaid, without the masters or owners thereof having or delivering to any collector of customs of the United States a certificate of inspection, as required by the statutes of the United States in such case made and provided.

Third. That said district attorney of the United, on behalf of the United States, alleges that all and singular the premises are true.

Fourth. That the owners of said steamboat Daniel Ball, to wit., Jesse Ganoe and Byron D. Ball, became and were liable, by reason of the premises, to a penalty, forfeited to the United States, of five hundred dollars, and that said steamboat Daniel Ball is liable for the same
5 under the statute in such case made and provided, by proceeding summarily by way of libel in this court.

Wherefore the said district attorney of the United States prays that due process of law may issue against the said steamboat Daniel Ball, her apparel, machinery, tackle and furniture, to enforce the forfeiture of the penalty aforesaid, and requiring notice to be given to all persons concerned in interest, to appear and show cause on the return day of said process, why such forfeiture and penalty should not be decreed.

A. D. GRISWOLD,
District Attorney of the United States
for the Western District of Michigan.

6

7 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the Western District of Michigan, ss:

[SEAL.] The President of the United States of America to the marshal of the western district of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States of America for the said western district of Michigan, on the second day of April, in the year of our Lord one thousand eight hundred and sixty-eight, by the United States of America against the steamer Daniel Ball, charging that said steamer did transport, on Grand River, goods, wares, merchandize, and passengers without having obtained a license according to law; whereby the said steamer became liable to a penalty of five hundred dollars, for the reason and causes in the said libel alleged and mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and that all proceedings being had, that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libelant:

You are, therefore, hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the to prayer of the said libel, that they be and appear before the said court, be held in and for the said western district of Michigan, on the 4th day of May, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Solomon L. Withey, judge of the district court of the United States for the western district of Michigan, at the district court-room in the city of Grand Rapids, in the said district, this second day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the 92.

ISAAC H. PARRISH, *Clerk.*

8 (Indorsed:) No. . District court of the United States for the western district of Michigan. In admiralty. Attachment. The United States v. the steamer Daniel Ball. Returnable first Monday of May, 1868.

Returned and filed April 20, 1868.

ISAAC H. PARRISH, *Clerk.*

A. D. GRISWOLD, *Libellant's Proctors.*

WESTERN DISTRICT OF MICHIGAN, *ss:*

By virtue of the within writ, on the 3d day of April, A. D. 1868, I seized the within-named Daniel Ball, her boats, tackle, apparel, and furniture, and engine, and now have the same in my custody, to awaite the further order of the court in the premises.

JAMES HENRY, *Marshal.*
By LEONARD CONEL, *Deputy.*

9 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the Western District of Michigan, ss:

The President of the United States of America to the marshal of the western district of Michigan, greeting:

Whereas a libel hath been filed in the said district court of the United States of America for the western district of Michigan, on the second day of April, in the year of our Lord one thousand eight hundred and sixty-eight, by the United States of America, of against the steamer Daniel Ball, her boats, tackle, apparel, and furniture, and Daniel Ball and Jesse Ganoe, claimants & owners, claiming that there is due for forfeiture in carrying goods, wares, and merchandize, and passengers without licencen: Wherefore he bring suit in a certain action of forfeiture, civil and maritime, for the condemnation and sale of the same for the causes in the said libel alleged by the said libellant:

Now, therefore, we do empower and strictly command you, the said marshal, that you cite and admonish Daniel Ball & Jessee Ganoe, owners of the said steamer, if they shall be found in your district, to be and appear in the said district court of the United States for the western district of Michigan, at the district court-room in the city of Grand Rapids, on the first Monday of May next ensuing, then and there to answer the said libel, and to make such allegations on that behalf; and also that you give public notice of the filing of said libel, and the issuing of the attachment and citation therein, by publication twice in each week, for two weeks successively, in the Grand Rapids Eagle, a newspaper printed and published in the said city of Grand Rapids, and by posting the said notice on the outer door of the building occupied by this court.

And have you at the said district court-room in the said city of Grand Rapids, on the first Monday of May next ensuing, this writ, with your doings in virtue thereof.

Witness the Hon. Solomon L. Withey, judge of the district court of the United States for the western district of Michigan, at the city of Grand Rapids, in the said district, this second day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the 92d.

ISAAC H. PARRISH, *Clerk.*

10 (Indorsed:) No. . District court of the United States for the western district of Michigan. In admiralty. Citation. The United States v. the steamer Daniel Ball. Returnable first Monday of May, 1868. Returned and filed , 186 . A. D. Griswold, libellant's proctor.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the third (3d) day of April, A. D. 1868, I served the within citation upon Byron D. Ball and Jessee Ganoe, the respondents within named, by reading to each of them the within,

and showing to each of them the seal of the court impressed thereon, in said district; and I further return that I caused a notice to be published two weeks in the Grand Rapids Eagle.

JAMES HENRY, *Marshal*
By LEONARD CONL, *Deputy.*

DISTRICT COURT OF THE UNITED STATES,
For the Western District of Michigan, ss:

11 In admiralty.

On this 3d day of April, in the year of our Lord one thousand eight hundred and sixty-eight, before Isaac H. Parrish, a commissioner duly appointed and empowered to take acknowledgements of bail, affidavits, and depositions, etc., within the western district of Michigan, in the matter of the libel and claim of the United States against the steamer "Daniel Ball," in a cause of forfeiture for a penalty moved and prosecuted in the district court of the United States for the district aforesaid.

Which day personally appeared Byron D. Ball & Jesse Ganoe as claimant of the said steamer Daniel Ball, and produced for suret Andrew J. Reeves, of the city of Grand Rapids, in said district; and the said Byron D. Ball and Jessee Ganoe and Andrew J. Reeves, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of one thousand dollars unto the said United States, that the said steamer Daniel Ball shall abide and answer the decree of the said court in the aforesaid cause, and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, administrators, goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

JESSE GANOE. [L. S.]
BYRON D. BALL. [L. S.]
ANDREW J. REEVES. [L. S.]

Taken and acknowledged this 3d day of April, A. D. 1868, before me, Isaac H. Parrish, U. S. commissioner, 8th circuit and western dist. of Mich.

ISAAC H. PARRISH.

WESTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally Byron D. Ball, Jesse Ganoe, and Andrew J. Reeves, of Grand Rapids, and made oath that they are severally worth the sum of one thousand dollars of lawful money of the United States of America, after payment of their just debts, in real estate, subject to execution, within the western district of Michigan.

On the 3d day of April, A. D. 1868, the said Byron D. Ball, Jesse Ganoe, and Andrew J. Reeves were sworn to the truth of the above attestation before me, Isaac H. Parrish, U. S. commissioner, 8th circuit and western district of Michigan.

ISAAC H. PARRISH,
U. S. Commissioner.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby approve of the within bond, and of the sureties therein named, as sufficient.

Given under my hand at Grand Rapids, in said district, this 3 day of April, 1868.

U. S. District Judge, Michigan.

12 (Indorsed:) No. . District court of the United States for the western district of Michigan. In admiralty. Stipulation to answer judgment.

Taken, acknowledged, and filed , 186 .

Clerk.

13 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

District court of the United States for the western district of Michigan, of the October term, A. D. 1867.

To the Hon. Solomon L. Withey, judge of said court:

Be it remembered, that on this day of April, A. D. 1868, before the Hon. Solomon L. Withey, judge as aforesaid, comes, in his own proper person, Augustus D. Griswold, district attorney of the United States for the western district of Michigan, & in behalf of the United States, and in pursuance of the rules and practice of this court, files this, an amended libel herein, and gives the said judge to understand and be informed—

First. That on the 30th day of March, A. D. 1868, the steamer Daniel Ball, being of one hundred and twenty-three & $\frac{32}{100}$ tons burthen, was employed in navigating a navigable river, to wit., Grand River in the State of Michigan, a navigable water of the United States, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did, at the time and place last aforesaid,
14 transport on said river, between the cities aforesaid, goods, wares, merchandize, and passengers, without having first obtained from the proper officer a lecinse, under the then existing laws of the United States.

Second. That on the day and year last aforesaid the said steamer Daniel Ball was employed in navigating said Grand River, in the State of Michigan, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did, at the time and place last aforesaid, transport goods, wares, merchandize, and passengers on said river, between the places aforesaid, without the master or owners thereof, or either of them, having procured the said steamboat to be inspected, or having or delivering to any collector of customs of the United States a certificate of inspection, as required by the statutes of the United States in such case made and provided.

Third. That on the day and year last aforesaid the said steamer Daniel Ball was employed in navigating said Grand River, in the State of Michigan, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did transport
15 goods, wares, & merchandize, shipped aboard said steamer, to be delivered, and by the owners of said steamboat agreed to be delivered at ports and places in States other than the State of Michigan, to wit., at Chicago, in the State of Illinois, in some instances, & in others at Milwaukee, in the State of Wisconsin, without having first obtained from the proper officer a licence under the then existing laws of the United States.

Fourth. That on the day and year last aforesaid the said steamer Daniel Ball was employed in navigating said Grand River, in the State of Michigan, between the city of Grand Rapids and the city of Grand Haven in said State; and, in such employment, did then & there transport goods, wares, and merchandize, shipped aboard said steamer, to be

delivered and by the owners of said steamer agreed to be delivered at ports & places in States other than the State of Michigan, to wit, at Chicago, in the State of Illinois, in some instances, & in others at Milwaukee, in the State of Wisconsin, without the master or owners thereof, or either of them, having procured said steamboat to be inspected or having or deliv'ing to any collector of customs of the United States a certificate of inspection, as required by the statute of the United States in such case made and provided.

16 Fifth. That on the day and year last aforesaid the said steamer Daniel Ball was employed in navigating the said Grand River, in the State of Michigan, between the city of Grand Rapids & the city of Grand Haven in said State; &, in such employment, said steamboat was, by way of transporting goods, wares, & merchandize, used in commerce then being carried on between the State of Michigan and divers States of the United States, to wit, the State of Illinois, Wisconsin, & New York, without having first obtained from the proper officer a licence therefor under the then existing laws of the United States.

Sixth. That said district attorney of the United States, on behalf of the United States, alleges that all and singular the premises are true.

Seventh. That the owners of said steamboat Daniel Ball, to wit, Jesse Gano and Byron D. Ball, became and were liable, by reason of the premises, to a penalty, forfeited to the United States, of five hundred dollars, and that said steamboat Daniel Ball is liable for the same under the statute in such case made and provided, by proceedings summarily by way of libel in this court.

17 Wherefore the said district attorney of the United States prays that due process of law may issue against the said steamboat Daniel Ball, her apparel, machinery, tackle, & furniture, to enforce the forfeiture of the penalty aforesaid, and requiring notice to be given to all persons concerned in interest to appear & show cause on the return day of said process why such penalty and forfeiture should not be decreed.

A. D. GRISWOLD,
District Attorney of the United States
for the Western District of Michigan.

18

19 UNITED STATES OF AMERICA,
Western District of Michigan:

In the district court of the United States for the western district of Michigan.—In admiralty.

To the Honorable S. L. Withey, judge of the district court for said district:

The answer and claim of Jesse Ganoe and Byron D. Ball, sole owners of the said steamer Daniel Ball, her engine, boiler, machinery, tackle, apparel, and furniture, and intervening for their interests in the same to the libel of the United States, answer and allege as follows:

First. That these respondents admit the truth of the matters contained in the first article of said libel, except in this, that under the laws of the United States said steamer was not required to obtain a license, and that said Grand River is not a navigable water of the United States.

Second. Respondents admit the truth of the matters contained
20 in the second article of said libel, except in this, that the master nor owner of said steamer were not required by the laws of the United States to have said steamer inspected, nor were they, or either of them, required by law to deliver a certificate of inspection to any collector of customs of the United States.

Third. That these respondents, in answer tothe 3d, 4th, & 5th allegations of libellants, admit that the said steamer was employed on said day and year in navigating said Grand River, between the cities of Grand Rapids and Grand Haven, in said State of Michigan, but that all other matters stated in said article are falsely alleged, and that the truth is as hereinafter stated.

That the said steamer Daniel Ball is a river steamer, drawing about two feet of water, so constructed as to be incapable of navigating the waters of Lake Michigan, or of continuing her voyage further that the city of Grand Haven, in said State of Michigan; that she takes on merchandize, goods, and wares at Grand Rapids, to be by her delivered at places on said Grand River and at Grand Haven aforesaid; that all of her cargo is unloaded at or before reaching Grand Haven, the
21 place that said steamer is destined for; that there are goods, wares, and merchandize shipped on said steamer destined for ports and places in States other than the State of Michigan, to wit, at Chicago, Illinois; Milwaukee, Wisconsin; but that said steamer delivers said last-mentioned goods at said Grand Haven, to the warehouse and forwarding agents to whom they are consigned at that port, who forward such goods to their destination; that said steamer is only a common-carrier from the city of Grand Rapids aforesaid to the said city of Grand Haven, upon waters entirely within the State of Michigan; that she carried passengers to and from Grand Rapids to Grand Haven aforesaid, and to and from the intermediate landings on said Grand River, and is engaged solely and entirely in domestic trade and commerce, and is not engaged in navigation or commerce between two or more States, or in any trade or commerce by means of which she is or can become subject to the navigation laws of the United States, or subject to any penalty as charged in said libel, and that under the existing laws of the United States no license was necessary, and under and by virtue of said laws of the United States it was not necessary for
22 the master or owners of said steamer, or either of them, to procure said steamer to be inspected, nor to deliver to any collector of customs of the United States any certificate of inspection.

Fourth. These respondents, further answering, say that by reason of the premises they are not liable to a penalty forfeited to the United States of five hundred dollars, and that said steamboat Daniel Ball is not liable for the same, and the premises considered this court has no jurisdiction of the pretended cause of action.

Whereupon these respondents pray that this honorable court will pronounce against the demand of the libellants in his aforesaid libel mentioned and set forth, with costs.

JESSE GANOE,
BYRON D. BALL,
By ANDREW J. REEVES.

BYRON D. BALL,
Proctors for Respondents.

WESTERN DISTRICT OF MICHIGAN:

On this sixteenth day of May, A. D. 1868, before me, a clerk U. S. court in and for said district court, personally came Andrew J. Reeves, the person who signed the foregoing answer, and made oath that
23 he had heard read the said answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true, and that he knows that the said Jesse Ganoe and Byron D. Ball are the sole owners of said steam'r Daniel Ball.

ISAAC H. PARRISH, *Clerk.*

24

25 At a session of the district court of the United States for the western district of Michigan, continued and held at the city of Grand Rapids, on Saturday, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Solomon L. Withey, district judge.

THE UNITED STATES
v.
THE STEAMER DANIEL BALL. } No. 31.—Seizure.

This cause having been argued and submitted to the court upon the pleadings and proofs, and the court being fully advised in the premises, and due deliberation being thereupon had, it is ordered and decreed that the libel aforesaid be and the same is hereby dismissed.

It is further ordered that there was probable cause for the seizure and prosecution in this cause, and that it be certified accordingly.

26

27 District court of the United States for the western district of Michigan.

THE UNITED STATES
v.
THE STEAMBOAT DANIEL BALL, her tackle, apparel &c.; Byron D. Ball & Jesse Ganoe, claimants and respondents.

The United States, the above libellants, conceiving itself agrieved by the final sentence or decree entered in the above entitled cause on this 25th day of July, A. D. 1868, doth hereby appeal therefrom to the next circuit court of the United States to be held in and for the said district, and prays that this appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent the said circuit court.

Grand Rapids, July 25, 1868.

A. D. GRISWOLD,
U. S. Att'y for the West. Dist. of Mich.
By E. S. EGGLESTON,
Ass't U. S. Att'y.

Filed July 25, 1868.

28

29 United States of America.—The circuit court of the United States for the sixth circuit and western district of Michigan.

THE UNITED STATES, appellant,
v.
THE STEAMBOAT DANIEL BALL, appellee.

In this cause it is hereby stipulated and agreed between Byron D. Ball and Jesse Ganoe, sole owners and claimants of the steamboat Daniel Ball, and Augustus D. Griswold, district att'y of the United States for the western district of Michigan, on the part and behalf of the United States—

1. That the steamboat Daniel Ball is a vessel propelled by steam, and is of about one hundred and twenty-three tons burthen.

2. That at the time of filing the libel in this cause, the said steamboat was not enrolled and licensed for the coasting trade.

3. That said steamboat was employed in the navigation of Grand River, between the cities of Grand Rapids and Grand Haven, both ports
30 and places within the State of Michigan; and was so constructed as to draw but about two feet of water; and was incapable of navigating the waters of Lake Michigan, or of continuing her voyage farther than said city of Grand Haven, in said State of Michigan.

4th. That said steamboat receives goods, wares, and merchandize at said city of Grand Rapids to be delivered by her at places on said river and at Grand Haven aforesaid, and that all of her cargo is unloaded at or before ariving at Grand Haven, her place of destination. That a part of said goods, wares, and merchandize, so as aforesaid shipped on said steamboat, are destined and marked for ports and places in States other than the State of Michigan. The said last-mentioned goods are delivered at Grand Haven aforesaid to the warehouse and forwarding agunt to whom they are consigned.

That said steamboat receives goods, wares, and merchandize at Grand Haven from warehousemen, a portion of which come from ports and places in States other than the State of Michigan, and destined for places within said State of Michigan.

That said steamboat is a common-carrier on Grand River, be-
31 tween the city of Grand Rapids aforesaid and said city of Grand Haven. That said steamboat does not run in connection with or in continuation of any line of steamboats or vessels on the lakes, or with any line of railway in said State.

That there are various lines of steamboats and vessels running from ports and places in other States to the port of Grand Haven, and carrying goods, wares, and merchandize. That the Detroit & Milwaukee railroad runs from Detroit to Grand Haven, touching at Grand Rapids and other places within between Grand Rapids and Grand Haven.

That said steamboat carries passengers solely and only from Grand Haven and Grand Rapids, and the landings on said river between said places, all in the State of Michigan.

A. D. GRISWOLD,
U. S. Dist. Att'y for the Western Dist. of Mich.
BYRON D. BALL,
Proctor for himself & Jesse Ganoe, Claimants.

Filed Nov. 6, 1868.

32

33 At a session of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, continued

and held at the United States court-rooms in the city of Grand Rapids, in said district, on the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Noah H. Swayne, circuit judge; the Honorable Solomon S. Withey, district judge.

THE UNITED STATES
v.
THE STEAMER DANIEL BALL. } Appeal in admiralty.

This cause having been argued and submitted upon the pleadings and proofs, and the court being fully advised in the premises, and it appearing to the court that the said steamer is guilty of a violation of the laws of the United States as in said libel charged, whereby the said steamer became and was and still is liable to the United States in the penalty prescribed by law, being the sum of five hundred dollars, which
34 said sum is a valid lien upon said steamer, her boats, tackle, apparel, furniture, and machinery, therefore the court doth now order, adjudge, and decree that the judgment of the district court be and the same is hereby reversed and set aside, and that the said penalty of five hundred dollars be and the same is hereby accordingly awarded to the United States, and that the said steamer Daniel Ball, her boats, tackle, apparel, machinery, and furniture, be, and the same is hereby, condemned therefor, and for the taxed costs arising on the libel aforesaid.

It is further ordered that the clerk issue to the marshal a writ of venditioni exponas, commanding him to sell the said steamer Daniel Ball, her boats, tackle, apparel, furniture, and machinery, at public auction, on giving not less than fifteen days' public notice thereof; such sale to take place at Grand Rapids.

35

36

37 Circuit court of the United States for the sixth judicial circuit and western district of Michigan.

THE UNITED STATES
v.
THE STEAMER DANIEL BALL; Jesse Ganoe & Byron D. Ball, claimants & respondents. } Claim of appeal.

The above-named respondents conceiving themselves aggrieved by the final sentence or decree entered on the sixth day of November, A. D. 1868, in the above-entitled cause, doeth hereby appeal therefrom to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

Dated this 8th day of February, A. D. 1869.

JESSE GANOE,
BYRON D. BALL,
Claimants & Respondents.

38 WESTERN DISTRICT OF MICHIGAN *ss:*

The appeal in this cause above claimed is allowed.

Dated this 27th day of February, A. D. 1869.

S. L. WITHY, *Dist. Judge.*

39 Supreme Court of the United States.

THE UNITED STATES, appellee,
v.
THE STEAMER DANIEL BALL; Jessee Ganoe & Bryon D. Ball, claimants and respondents, appellants.
} Petition of appeal.

To the Supreme Court of the United States:

The petition of appeal of the above-named Jesse Ganoe and Bryon D. Ball respectfully shows that a decree was lately made in the circuit court of the United States for the western district of Michigan, bearing date the sixth day of November, A. D. 1868, in a certain cause of admiralty and maritime jurisdiction pending in the said court, wherein the above-named United States was libellant, and the above-named steamer Daniel Ball was defendant, and Jesse Ganoe and Byron D. Ball were claimants and respondents; in and by which said decree it was, among other things, ordered, adjudged, and decreed that a penalty of five hundred dollars be awarded to the said United States, and that said steamboat, her tackle, machinery, and furniture be condemned therefor, and the taxed costs of said prosecution; which said decree of the
40 circuit court, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore this appellant respectfully prays that said decree may be reversed, and that such other decree may be made by this court as shall be agreeable to equity and good concience, and these appellants may be restored to all things which he has lost by said decree.

Dated this 27th day of February, A. D. 1869.

JESSE GANOE,
BYRON D. BALL,
Claimants & Respondents.

BYRON D. BALL,
Attorney for Claimants.

41

42 (Indorsed:) The United States, appellee, v. The steamer Daniel Ball, petition for appeal.

43 Know all men by these presents that we, Byron D. Ball and Jesse Ganoe, as principals, and Zenas G. Winsor, as surity, of Grand Rapids, in the county of Kent, and State of Michigan, are held and firmly bound unto the United States of America, in the sum of two hundred and fifty dollars to be paid unto the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated this 27th day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bounden Jesse Ganoe and Byron D. Ball has appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, bearing date the sixth day of November, A. D. 1868, in a cause in which the said United States was libellant, and the said Byron D. Ball and Jesse Ganoe were claimants of the steamer Daniel Ball and respondents:

Now, therefore, the condition of this obligation is such, that if the

above-named appellant Jesse Ganoe and Byron D. Ball, shall
44 prosecute their appeal with effect, and pass all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void; otherwise to remain in full force and effect.

BYRON D. BALL. [SEAL.]
JESSE GANOE. [SEAL.]
ZENAS G. WINSOR. [SEAL.]

Sealed & delivered in presence of—
THOS. BLEHENCH.

WESTERN DISTRICT OF MICHIGAN *ss:*

I hereby approve of the within bond, and I do certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount, and that said bond is sufficient.

March 1st, 1869.

S. L. WITHEY,
U. S. Dist. Judge.

45 And I further certify that I have compared the above and foregoing with the proceedings in said cause of record in my office, and that the same is a true copy and transcript thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and the seal of the said circuit court, at Grand Rapids, this 25th day of March, A. D. 1869.

[SEAL.] ISAAC H. PARRISH, *Clerk.*

Fels:

80 fol's, *a* 10	$8
5 fol's, 15	75
Seal	20
	$8 95

46 UNITED STATES OF AMERICA:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the 1st Monday of December, next, pursuant to appeal from the circuit court of the United States for the western district of Michigan, wherein Jesse Ganoe and Byron D. Ball are claimants of the steamer Daniel Ball, and respondents are appellants, and you are appellee, to show cause, if any there be, why the said decree should not be corrected and speedy justice done to the parties in that behalf.

Witness Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States, this 25th day of March, A. D. 1869.

S. L. WITHEY,
U. S. Dist. Judge.

I hereby admit due service on me of the above citation, this 12th day of June, A. D. 1869.

JOHN H. STANDISH,
U. S. Attorney for the Western District of Michigan.

(Indorsed:) United States vs. steamer Daniel Ball. Citation.

United States Supreme Court.

No. 476.

DECEMBER TERM, A. D. 1868.

THE STEAMER DANIEL BALL, Appellant.
vs.
THE UNITED STATES, Appellee.

Appeal from the United States Circuit Court for the Sixth Circuit and Western District of Michigan.

ABSTRACT OF CASE,
BRIEF
AND ARGUMENT.

United States Supreme Court.

No. 476.

December Term, A. D. 1868.

THE STEAMER DANIEL BALL,
Appellant.

vs.

THE UNITED STATES,
Appellee.

Appeal from the United States Circuit Court for the Sixth Circuit and Western District of Michigan.

ABSTRACT OF CASE.

Libel filed in the District Court of the United States, for the Western District of Michigan, by A. D. Griswold, Esq., District Attorney of the United States, for the Western District of Michigan, April 2nd, A. D. 1868, charges:

First. That on the 30th day of March, A. D. 1868, the steamer Daniel Ball, being of one hundred and twenty-three and 32-100 tons burthen, was engaged in navigating Grand River, in the State of Michigan, and in transporting goods, merchandise and passengers, between the cities of Grand Rapids and Grand Haven, without having obtained a license under the laws of the United States.

Second. That on the day and year aforesaid, the steamer Daniel Ball was engaged as aforesaid, without her master or owners having or delivering to any Collector of Customs of the United States, a certificate of inspection, as required by the Statutes of the United States.

Third. That said District Attorney of the United States alleges that the premises are true.

Fourth. That the owners of said steamboat Daniel Ball, to wit: Jesse Ganoe and Byron D. Ball, became and were liable, by reason of the premises, to a penalty, forfeited to the United States, of five hundred dollars, and that said steamboat Daniel Ball is liable for the same.

Prayer for judgment.

An amended libel was filed May 12th, 1868, which charges:

First. That on the 30th day of March, A. D. 1868, the steamer Daniel Ball, being of one hundred and twenty-three and 32-100 tons burthen, was employed in navigating Grand River, a navigable water of the United States, between the cities of Grand Rapids and Grand Haven, in the State of Michigan, and in the transportation of goods, merchandise and passengers as aforesaid, without license under the laws of the United States.

Second. That on the day and year aforesaid, the said Steamer was employed as aforesaid, without her master or owners having procured the said steamboat to be inspected, or having or delivering to any Collector of Customs of the United States, a certificate of inspection, as required by the Statutes of the United States.

Third. That on the day and year aforesaid, the said steamer was employed as aforesaid, and in such employment did transport goods, wares and merchandise, shipped

on board said steamer, to be delivered, and by the owners of said boat agreed to be delivered, at ports and places in States other than the State of Michigan, without license under the laws of the United States.

Fourth. That on the day and year aforesaid, the said Steamer was engaged as alleged in third count, without her master or owners having procured said Steamboat to be inspected, or having or delivering to any Collector of Customs of the United States, a certificate of inspection, as required by the Statutes of the United States.

Fifth. That on the day and year aforesaid, the said steamer was employed in navigating Grand River as aforesaid, and was, by way of transporting goods, marked and destined for other States, engaged in commerce between the States, without license under the laws of the United States.

Sixth. That said District Attorney of the United States alleges the premises to be true.

Seventh. That the owners of said steamboat Daniel Ball, to wit: Jesse Ganoe and Byron D. Ball, became and were liable by reason of the premises, to a penalty, forfeited to the United States, of five hundred dollars, and that said steamboat is liable for the same.

Prays judgment.

Writ of Attachment and Citation of owners to appear were issued April 2nd, A. D. 1868.

Said steamer Daniel Ball was attached, and her owners, Jesse Ganoe and Byron D. Ball were cited to appear and answer to the said libel filed on the first Monday of May then next ensuing.

Notice of the said Attachment and Citation was duly published, and due proof of publication filed April 20, 1868.

May 16th, A. D. 1868, the answer and claim of Jesse Ganoe and Byron D. Ball, sole owners, was filed; which answer is as follows:

First. Respondents admit the truth of the matters contained in the first article of said libel, except in this that said steamer was not required to obtain a license under the laws of the United States, and that Grand River is not a navigable water of the United States.

Second. Respondents admit the truth of the matters contained in the second article of said libel, except in this that the master nor owners of said steamers were not required by the laws of the United States to have the said steamer inspected, nor were they, or either of them, required to deliver a certificate of inspection to any collector of customs of the United States.

Third. Respondents admit, in answer to the 3d, 4th and 5th allegations of libellants, that said steamer was employed on the day and year alleged, in navigating Grand River as alleged, but that all other matters in said articles are falsely alleged, and that the truth is as follows:

That the said steamer Daniel Ball is a river steamer, drawing about two feet of water, so constructed as to be incapable of navigating the waters of Lake Michigan, or of continuing her voyage further than said city of Grand Haven, in said State of Michigan, that she takes on merchandise, goods and wares at Grand Rapids, to be by her delivered at places on Grand River, and at Grand Haven aforesaid, that all of her cargo is unloaded at or before reaching Grand Haven, the place of her destination; that there are goods, wares and merchandise shipped on

said steamer, destined for ports and places in States other than the State of Michigan, but that she delivers the said goods at Grand Haven, aforesaid, to warehouse and forwarding agents to whom the said goods are consigned at that port, who forward such goods to their destination; that said steamer is a common carrier only from Grand Rapids to Grand Haven aforesaid, on Grand River, and upon waters wholly within the State of Michigan. That she carries passengers to and from Grand Rapids to Grand Haven aforesaid, and to and from the intermediate landings on said Grand River, and is engaged solely and entirely in domestic trade and commerce, and is not engaged in trade or commerce between two or more States, or in any trade by means of which she is subject to the navigation laws of the United States, or subject to any penalty as charged in said libel, and that under the laws of the United States no license was necessary, and under and by virtue of said laws of the United States it was not neeessary for the master or owners of said steamer to procure said steamer to be inspected, nor to deliver to any collector of customs of the United States any certificate of inspection.

Fourth. Respondents say that they are not liable, by reason of the premises, to a penalty, forfeited to the United States, of five hundred dollars, and that said steamboat Daniel Ball is not liable for the same, and, the premises considered, this Court has no jurisdiction of the pretended cause of action.

Respondents pray judgment.

Stipulations as to facts, filed Nov. 6th, 1868.

It is stipulated and agreed by and between Jesse Ganoe and Byron D. Ball, sole owners and claimants of the

steamboat Daniel Ball, and Augustus D. Griswold, District Attorney of the United States, for the Western District of Michigan, on the part of the United States:

First. That the steamboat Daniel Ball is a vessel propelled by steam, and is of about one hundred and twenty-three tons burthen.

Second. That at the time of filing the libel in this cause, the said steamboat was not enrolled and licensed for the coasting trade.

Third. That said steamboat was employed in the navigation of Grand River, between the cities of Grand Rapids and Grand Haven, both ports and places within the State of Michigan, and was so constructed as to draw but two feet of water, and was incapable of navigating the waters of Lake Michigan, or of continuing her voyage farther than said city of Grand Haven, in said State of Michigan.

Fourth. That said steamboat receives goods, wares and merchandise at said city of Grand Rapids, to be delivered by her at places on said river and at Grand Haven aforesaid, and that all of her cargo is unloaded at or before arriving at Grand Haven, her place of destination; that a part of said goods, wares and merchandise, so as aforesaid shipped on said steamboat, are destined and marked for ports and places in States other than the State of Michigan; that said last mentioned goods are delivered at Grand Haven aforesaid, to the warehouse and forwarding agent to whom they are consigned; that said steamboat receives goods, wares and merchandise at Grand Haven aforesaid, from warehouses, a portion of which come from ports and places in States other than the State of Michigan, and destined for places within said State of Michigan.

That said steamboat is a common carrier on Grand River, between the city of Grand Rapids and the city of Grand Haven aforesaid.

That said Steamboat does not run in connection with or in continuation of any line of steamboats or vessels on the Lake, or with any line of railway in said State.

That there are various lines of steamboats and vessels running from ports and places in other States to the port of Grand Haven, and carrying goods, wares and merchandise; that the Detroit and Milwaukee Railroad runs from Detroit to Grand Haven, touching at Grand Rapids and Grand Haven.

That said steamboat carries passengers solely and only from Grand Haven and Grand Rapids, and the landings on said river between said places, all in the State of Michigan.

After argument and on the 25th day of July, A. D. 1868, a decree of the District Court of the United States for the Western District of Michigan, was rendered, dismissing the said libel.

Claim of Appeal to the Circuit Court of the United States, to be next held in said Western District of Michigan, was filed July 25th, 1868, on the part of the United States.

After hearing of argument in the said Circuit Court of the United States, this cause was decided by His Honor Justice Swayne, Nov. 6th, 1868, reversing the decree of the Court below.

Claim of Appeal to the Supreme Court of the United States was filed by the claimants Feb. 27th, 1869.

United States Supreme Court.

No. 476.

December Term, A. D. 1868.

THE STEAMER DANIEL BALL,
Appellant.

vs.

THE UNITED STATES,
Appellee.

Appeal from the United States Circuit Court for the Sixth Circuit and Western District of Michigan.

POINTS AND ARGUMENTS OF ANDREW T. MCREYNOLDS, ATTORNEY FOR APPELLANT.

The question involved in this case is, whether a steamer engaged in transportating passengers and merchandise on Grand River, in the State of Michigan, is required by the laws of the United States to be licensed and inspected.

The facts in this case are not disputed, and are stipulated. (See abstract of case.)

The provisions of law under which this steamer was seized, are commonly known as "The Navigation Laws

of the United States," passed for the purpose of regulating navigation and providing for the safety of passengers, &c.

I refer to the act of March 12th, 1812.

The act of July 7th, 1838, entitled, 'An Act to provide for the better security of the lives of passengers on board vessels propelled in whole or in part by steam."

5th Statutes at Large, 626.

Also an amendatory act, passed Aug. 30th, 1852.

10th Statutes at Large, 61.

Also the act of July 25th, 1866.

These laws for the regulation of navigation are passed under the power given to Congress in Article 1, Section 8, Clause 3, of the Constitution of the United States, which declares that Congress shall have power to regulate commerce with foreign nations and among the several States, &c.

Point 1st. This steamer is not liable under the navigation laws of the United States, unless she was employed upon the *navigable waters of the United States*, in carrying on commerce among the States.

What, then, is meant by navigable waters or rivers of the United States, and the kindred phrases employed in the navigation laws? And does Grand River fall within that term?

Are all the bays, lakes, rivers, &c., embraced within the limits of this country, included? Is there not another element entering into this term beside the fact that the river, &c, is embraced within the territorial limits of this country?

It must be clear, I think, that the term is not employed in a territorial sense; merely or primarily to include all waters within the territorial limits of the United States, to which the term "navigable" is applied in American law. We have extended that term to include not simply the tide-waters, as is understood by it in England, but also the great fresh water rivers and lakes of our country; and, in a still broader sense, we apply it to every stream or body of water, susceptible of being made, in its natural condition, a highway for commerce, even though that trade be nothing more than the floating of lumber in rafts or logs.

Brown *vs* Chadbourne, 31 Maine, 9.
Morgan *vs.* King, 35 N. Y., 454.
Moore *vs.* Sanderson, 2 Mich., 519.

Navigable waters, then, in the broadest sense, are all those waters which are highways for trade or travel, and beneficial to the public as such, however limited and local may be the benefit.

But if merely because a stream is a highway it becomes a navigable water of the United States, in a sense that attaches to it, and the vessels trading upon it, the regulating control of Congress, then on the same grounds, every highway must be regarded as a highway of the United States, and the vehicles upon it must be subject to congressional control. But this, certainly, will not be claimed, on the part of the government.

The *navigable rivers of the United States*, pass through, form the boundary lines of States, are not in any one State, are not the exclusive property of any one State, but are common to all.

Over a navigable river of the United States, one State cannot exercise the entire control; it could not stop the citizens of another State or of the United States from navigating it, by dams, bridges, &c. It is common to all.

To make waters navigable waters of the United States, some other incident must attach to them beside the territorial, and the susceptibility to public use.

This term contrasts with *domestic waters of the United States*, and implies, not simply that the waters are public and within the Union, but that they have attached to them, some circumstance that brings them within the scope of the sovereignty of the United States, as defined by the Constitution.

It has been claimed that this river was made a public, navigable river of the United States, by one of the six articles of the ordinance of the Confederate Congress, for the government of the territory northwest of the Ohio river, adopted July 14th, 1787, of which I refer to the following: "The navigable waters leading into the Mississippi and St. Lawrence rivers and the carrying places between the same, shall be common highways and forever free, &c.," which articles were "to be considered as articles of compact between the original States and the people and States in said territory, and forever remain unalterable unless by common consent."

We claim that this ordinance has been superseded, and if it has not, it would not apply to this case, as will be hereinafter seen.

After the adoption of the Constitution of the United States, an act of Congress, passed August 7th, 1789, (1st Statutes at Large, 50,) continued the ordinance in force, and modified it in conformity to the conditions of the Constitution, so far as it related to the temporary government of the territory.

The Constitution of the United States, subsequently adopted, contsins the provision that "New States may

be admitted by the Congress into this Union," which implies that new States shall be admitted into the Union on an equality with the original States.

Section one of an act of Congress, passed January 26th, 1837, entitled, "An Act to admit the State of Michigan into the Union, on an equal footing with the orignal States," declares "That the State of Michigan shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

5 Statutes at Large, 144.

The ordinance directs that the territory shall be divided into not less than three nor more than five States, which direction together with boundary lines therein prescribed, has been disregarded in the admission of new States, by acts of Congress.

If the ordinance were obligatory in any particular, and not altered by common consent, nor superseded by the Constitution of the United States, the States embraced within the Northwestern Territory, could not have been admitted into the Union *on an equality with the other States, which is a fundamental principle of the Constitution; the basis of this Union.*

By the acts of Congress admitting the new States upon their application, the several articles of the compact were not merely altered by the common consent required in the ordinance, but were superseded.

Pollard's Lessees *vs.* Hagen, 3d How. 312.

Parmelee *vs.* First Municipality of New Orleans, 3d How. 589.

Strader *vs.* Graham, 10th How. 82.

Dred Scott *vs.* Sanford, 19th How. 393, 490-1-2.

But admitting the provisions of the ordinance respecting navigable waters to be still in force, has it the effect

to make any waters "navigable waters of the United States," that would not have been such had that ordinance never existed? I think very clearly not.

That ordinance was a compact between the United States and the people of the territory. As regards the navigable waters therein, the people agreed that they should remain forever free. They did not assign on behalf of the States subsequently to be formed, any control over such waters. They only covenanted that such States having such control, should not so exercise it as to preclude the use of the waters as public highways. They imposed restraints on their own action, but they did not and could not enlarge, by their compact, the powers of Congress within their limits; any other view would be inconsistent with the equality of States.

The power of Congress, to pass navigation laws, comes exclusively from the control given by the Constitution over certain classes of commerce; and unless this prosecution can be sustained under *that* power, it must fail.

I should concede, if the ordinance of 1787 were still in force, that the Federal Courts might enforce its provisions, but it would not be because domestic streams are thereby rendered *navigable waters of the United States.* It would, on the other hand, be because the States had agreed with the Union, that they would not obstruct the use of domestic waters, by citizens generally. It would not be by way of enforcing the control of Congress over commerce, but by way of enforcing a contract. The two things are altogether different and distinct.

Grand River is, as we claim, a domestic stream, and not a navigable water of the United States. These navigation laws only require vessels propelled in whole or in part by steam, *navigating the waters of the United States, to be licensed, &c.*

From the passage of the first of such acts to the present time, only *such* waters have been referred to.

A license only gives authority to navigate the waters of the United States; rivers, bays, &c.

In the case of Gibbons *vs.* Ogden, 9 Wheaton, the Court said "a license to carry on the coasting trade gave full authority to navigate the waters of the United States, by steam or otherwise, for the purpose of carrying on the coasting trade, and that the laws of New York State, prohibiting any steam vessels, except those by them authorized, from navigating the Hudson River, and other waters therein mentioned, were of no validity.

The reason is, that those waters were navigable waters of the United States, and that Congress, in authorizing the licensing of vessels navigating such waters had legislated and acted upon that subject, within their commercial authority, and such license gave the vessels *so licensed*, full authority to navigate those waters.

In the case of the "Black Bird Creek Marsh Company," (2d Peters, 250,) the Court said that the stopping of the navigation of the creek was a proper exercise of the power of the State, unless it was in contravention of some law of commerce, and that Congress had passed no such act.

This case established the doctrine that *that* stream, although used by vessels engaged in, and licensed for the coasting trade, was not a public navigable water of the United States, and that such a license did not authorize vessels to navigate that creek, or affect that stream.

Justice Thompson, in the case of the "City of New York *vs.* Wilson," (11 Peters, 147,) remarks, in speaking of the case of the Black Bird Creek Marsh Company, that "the State law here operated upon the navigation of waters, over which the power of Congress to regulate commerce confessedly extends, and yet the State law, not coming in conflict with any act of Congress, was held not to be unconstitutional, and was not affected by the dormant power to regulate commerce."

If the Black Bird Creek was a public navigable water of the United States, the doctrine of the case of Gibbons *vs.* Ogden would have prevailed.

In the case of Gilman *vs.* Philadelphia, (3 Wall. 713,) it was claimed by the complainant that the Schuylkill river is a public navigable river, subject to the power of Congress to regulate commerce, and that Congress "has exercised that power and regulated the navigation of that river; and that the bridge, as constructed, or threatened to be constructed, interferes with the enjoyment of that use, and is inconsistent with, and in violation of the acts of Congress regulating the navigation of that river."

His Honor, Justice Swayne, in delivering the opinion of the court, (3d Wall. 729,) commenting upon the Black Bird Creek Marsh Co. case, says, "This opinion came from the same expounder of the Constitution who delivered the earlier and more elaborate judgment in Gibbons *vs.* Ogden; we are not aware that the soundness of the principle upon which the court proceeded has been questioned in any later case. We can see no difference in principle, between that case and the one before us; each is entirely within the State which authorizes the obstruction. Black Bird Creek is the less important water, but it had been *navigable*, and its obstruction was complete.

Clifford, J., with whom concurred Wayne and Davis, JJ., in delivering the dissenting opinion in the above case, remarked "Stripped of all circumlocution, the supposed distinction, as maintained in the opinion of the majority of the court, is, that in the case at bar, it does not appear that Congress has passed any act regulating the navigation of the river described in the bill of complaint, and that, inasmuch as there is no federal regulation upon the subject, the law of the State Legislature authorizing the erection of the bridge, is a valid law even if the bridge is an obstruction to navigation, because the State law is *not in conflict with any act of Congress, giving protection to the otherwise paramount right of navigation.*

The case of the State of Pennsylvania *vs.* Wheeling and Belmont Bridge Co., 18th How. 450, was controlled by the same principles announced in the case of Gibbons *vs.* Ogden; that Congress had legislated, within its commercial power, upon the subject of navigation on the waters therein referred to; that, in other words, the Ohio River was a public navigable river of the United States.

I refer to the case of Veazie *et al. vs.* Moore, (14 How. 568,) which arose on the Penobscot River, in the State of Maine. That river is entirely within that State. It was held, in that case, that a license to carry on the coasting trade did not authorize a vessel to navigate the upper waters of that river; the State having entire control over that river, as the law then existed.

I also refer to the Passaic Bridge case, cited in 3d Appendix. 3 Wall. 782.

The act of July 7th, 1838, (5th Statutes at large, 626,) describes the bays, lakes, rivers and other navigable waters of the United States. The acts prior and subsequent are not more comprehensive.

We say that if Congress has passed no act under its commercial power, regulating the navigation on, or which includes the Black Bird Creek, the Passaic River, the Penobscot River or the Schuylkill, then it has passed none which includes Grand River, in the State of Michigan; that the Congress of the United States, under its commercial power to regulate commerce among the several States has passed no act prohibiting, interfering with, or regulating the navigation of Grand River by boats *that ply upon that river exclusively;* that no law of the United States required the steamer Daniel Ball to be licensed or inspected; that Grand River does not fall within the meaning of the term used in the navigation laws, "*a navigable river of the United States.*"

Again, this river is not brought within the sphere of the sovereignty of the United States as defined in the Con-

stitution, unless it be, by becoming a highway for the commerce which Congress can regulate.

By the Constitution, Congress regulates commerce with foreign nations, among the several States, &c.

No such commerce is carried on upon Grand River. *Commerce means an exchange of commodities.* This river is entirely within the State of Michigan, and therefore an exchange of commodities between two States *cannot* be made upon it. It is navigated by vessels the commencement and termination of whose voyage is entirely within the State. It is not adapted to navigation by lake going vessels, which alone could carry on commerce between the port at its mouth and any other State. It cannot therefore be said to be a public water of the United States, because forming part of a continuous route for vessels engaged in inter-state trade.

The *commerce* which Congress regulates is not carried on upon it, and it consequently is not brought within the sphere of the national jurisdiction.

It is simply a domestic highway upon which commerce is carried on between citizens of the same State.

The framers of the Constitution supposed the State would be best able to establish all necessary regulations for such commerce, and all proper police regulations for such highways. They have not authorized Congress to interfere, and Congress has never done so by attempting to subject this stream to regulations specially applicable to it. The case falls strictly within that of *Veazie vs. Moore*, (14 *How.* 569.)

There as here, the stream was navigable, but there as here, its natural condition precluded its being used for continuous voyages from one State to another.

Again: If Grand River is a navigable water or river of the United States, was the steamer Daniel Ball en-

gaged in carrying on commerce among the States within the meaning of these laws, construed by the constitutional power of Congress?

The power to regulate commerce covers a wide field, and embraces a great variety of subjects. Commerce includes navigation; navigation is one of the commercial subjects.

Commerce which is purely internal, cannot be regulated by Congress.

The navigation of this steamer is clearly internal; she plys between Grand Rapids and Grand Haven, and is incapable of extending her voyage further. (See sec. 3, of Stipulations).

The acts of Congress regulating vessels propelled in whole or in part by steam, commonly known as the "navigation laws," only affect that particular branch of commerce called navigation.

If Congress cannot regulate commerce which is purely internal, how can it regulate navigation, a subject of commerce, clearly internal?

The navigation laws were mostly passed for the better protection of the lives of passengers. The common and statute laws of the land, give the shippers full protection and make the liabilities of common carriers sufficiently clear, so that it would hardly be necessary for Congress to intervene for that purpose.

This steamer, so far as her passenger trade is concerned, is clearly engaged in internal commerce; as she transports passengers "solely and only from Grand Haven and Grand Rapids, and the landings on said river, between said places, all in the State of Michigan-" (See last paragraph of sec. 4, of Stipulations.)

This steamer, if engaged in commerce among the states, was so only in the carrying of freight, and unless the law clearly contemplates that this class of vessels shall be inspected and licensed, she must be exonerated from that duty.

This steamer "does not run in connection with any line of steamboats or vessels on the lakes, or with any line of railways in said state. (See Stipulation, sec. 4.)

The cargo of this steamer is all delivered at or before arriving at her port of destination. Her contract of affreightment commences within the State of Michigan, and she transports and delivers such freight all within that State. (See Sec. 4, Stipulation.)

This vessel receives her freight money on such delivery, and has completely fulfilled and performed her contract, so that her business, with reference to the freight transported, is commenced and ended within the State of Michigan.

In the case of Allen *et al. vs.* Newberry, (21 How. 246,) although an admiralty case, the court said that " the contract of affreightment between ports and places in the same state, was not the subject of admiralty jurisdiction, as it concerned the purely internal trade of a state."

The court also said, in the case of Maguire *vs.* Card, (21 How.) where the steamer was engaged in navigation and trade on the Sacramento river that "she was therefore engaged in the purely internal commerce of the state.

But it has been supposed to make a difference that packages were put on board the steamer plying on Grand River, destined and marked for ports and places in states other than the State of Michigan. It is admitted that the steamer did not take these packages out of the state, nor did she run in connection with any vessels that did; she simply took packages at one place in the State of Michigan, to be delivered at another place in the same state, to some party who appears by a direction on the packages, ("the goods are delivered at Grand Haven aforesaid, to the warehouse and forwarding agent to whom they are consigned." See Stipulation) to be expected to find some other conveyance for them to a dis-

tant point. We do not know from this record, that such conveyance was ever found. But, found or not, the owners of this vessel had nothing to do with it. Their operations were confined entirely to the state, and did not, even by contract, extend beyond its limits.

It seems clear, therefore, that this steamer was engaged exclusively in domestic trade. If not, there is no such thing as the domestic trade of a state, and Congress may take jurisdiction of the whole commerce of the country.

The railroads entirely within a State, which transport bags of grain or barrels of fruit destined eventually to a distant market, may be subjected to congressional police regulations.

But the regulations need not stop at the cars, they may go back to the teamster who drew the freight to the cars, and to the farmer who raised and forwarded it, and each of them may be held to be engaged in commerce among the states, if the produce he handles in one state, eventually, through third parties, is expected to reach another. Nay, even the omnibusses in our cities may be subjected to similar regulations, be required to be licensed and inspected for explosive oils in their lamps, if you please, under congressional legislation, because they carry passengers destined, and baggage marked for distant states.

His Honor, Justice Davis, at the last September term of the United States Circuit Court in the State of Wisconsin, affirmed the decree of the United States District Court, dismissing the libel filed against the steamer Monticello, by the United States, wherein it was charged that this steamer navigated the Fox River, a navigable water of the United States, between the ports and places of Oshkosh and Portage City, in said district, and, prior to said seizure, was and had been engaged in carrying passengers and transporting cargoes of freight and merchandise, consisting of the products of the State of Wisconsin, destined for use and consumption in other states of the

United States, and in carrying merchandise consisting of the products of other States of the United States, and transported therefrom to the State of Wisconsin, and destined to different points and ports within the said State, without the proper enrollment and license under the existing laws of the United States.

In conclusion we say, that the steamer Daniel Ball was not employed upon a navigable river or water of the United States, and was not engaged in carrying on commerce among the States, and is not liable as charged in the amended libel, filed in this cause.

ANDREW T. McREYNOLDS,
Attorney for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE STEAMER DANIEL BALL
vs.
THE UNITED STATES.
} No. 241.

Appeal from the United States Circuit Court for the Western District of Michigan.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE STEAMER DANIEL BALL
vs.
THE UNITED STATES. } No. 241.

Appeal from the United States Circuit Court for the Western District of Michigan.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was a libel of information, on behalf of the United States, against the steamer "Daniel Ball," to recover a penalty claimed to have been forfeited by the owners of that steamer, on account of not having procured an inspection thereof and obtained a license therefor while the same was employed in transporting passengers and merchandise on Grand river, in the State of Michigan, as required by the provisions of the navigation acts of July 7, 1838, (5 Stats., 304,) August 30, 1852, (10 Stats., 61,) and July 25, 1866, (14 Stats., 227.)

The second section of the act of July 7, 1838, provides—

"That it shall not be lawful for the owner, master, or captain of any steamboat or vessel propelled in whole or in part by steam, to transport any goods, wares, and merchandise, or passengers, in or upon the bays, lakes, rivers, or other navigable waters of the United States, from and after the said first day of October, 1838, without having first obtained, from the proper officer, a license under the existing laws, and without having complied with the conditions imposed by this act; and for each and every violation of this section the owner or owners of said vessel shall forfeit and pay to the United States the sum of five hundred dollars, one-half for the use of the informer; and for which sum or sums the steamboat or vessel so engaged shall be liable, and may be seized and proceeded against summarily by way of libel in any district court of the United States having jurisdiction of the offence."

The license referred to in this section is understood to be that required for vessels employed in the coasting trade by the act of February 18, 1793, (1 Stat., 305.)

By the first section of the act of August 30, 1852, which is amendatory of the act of July 7, 1838, it is enacted—

"That no license, register, or enrolment, under the provisions of this or the act to which this is an amendment, shall be granted, or other papers issued by any collector, to any vessel propelled in whole or in part by steam, and carrying passengers, until he shall have satisfactory evidence that all the provisions of this act have been fully complied with; and if any such vessel shall be navigated, with passengers on board, without com-

plying with the terms of this act, the owners thereof and the vessel itself shall be subject to the penalties contained in the second section of the act to which this is an amendment."

The remaining sections of this act make provision for the inspection of steamboats, and their equipment, etc.

Section 9 of the act of July 25, 1866, declares—

"That all vessels navigating the bays, inlets, rivers, harbors, and other waters of the United States, except vessels subject to the jurisdiction of a foreign power and engaged in foreign trade and not owned in whole or in part by a citizen of the United States, shall be subject to the navigation laws of the United States," etc.

The proceedings were originally commenced in the district court of the United States for the western district of Michigan, on the 2d of April, 1868, the libel charging that, in March, 1868, the said steamer, being of $123\frac{32}{100}$ tons burden, was engaged in transporting goods, merchandise, and passengers between the cities of Grand Rapids and Grand Haven, on said river, without having obtained a license, and without her master or owners having or delivering to any collector of customs a certificate of inspection, etc., whereby the owners thereof became liable to a penalty of five hundred dollars, and that the said steamer is liable for the same, concluding with a prayer for process, etc., (printed Record, pp. 1 and 2.) An attachment was then issued against the vessel, by virtue of which it was seized by the marshal, and a monition was at the same time issued which was duly served upon Byron D. Ball and James

Ganoe, claimants of the steamer, to whom and a surety the same was bailed. (*Ibid.*, pp. 2 to 4.)

An amended libel was subsequently filed, setting forth: 1st, that on the 30th of March, 1868, the said steamer was employed in navigating the river aforesaid, between the cities aforesaid, and in the transportation of merchandise and passengers, without license under the laws of the United States; 2d, that on same day and year she was employed as aforesaid without her master or owners having procured her to be inspected, or having or delivering to any collector a certificate of inspection as required by the laws of the United States; 3d, that on same day and year she was employed as aforesaid, and in such employment did transport goods, wares, and merchandise, shipped on board said steamer, to be delivered, and by her owners agreed to be delivered, at ports and places in States other than the State of Michigan, without license; 4th, that on same day and year she was engaged as last alleged, without her master or owners having procured her to be inspected, or having or delivering to any collector a certificate of inspection; and, 5th, that on same day and year she was employed in navigating said river as aforesaid, and was, by way of transporting goods marked and destined for other States, engaged in commerce between the States, without license, etc. (*Ibid.*, pp. 5 and 6.) To this the above-named claimants, as sole owners, put in an answer denying the liability of themselves and of the steamer under the navigation laws for the penalty demanded by

the libellants, etc , (*ibid.*, pp. 6 and 7;) and afterwards, on the 25th of July, 1868, the cause having been argued and submitted to the court, the libel was dismissed. (*Ibid.*, p. 8.) Thereupon an appeal was duly taken from the district court to the next circuit court of the United States held in and for said district, by which latter court a decree was rendered on the 6th of November, 1868, overruling the judgment of the district court, and condemning the steamer for the amount of the penalty and costs. (*Ibid.*, pp. 8 to 10.) From that decree an appeal to this court was claimed and allowed in February, 1869, and a citation was issued on the 25th of March and served on the 12th of June following. (*Ibid.*, pp. 10 to 12.)

The following is a statement of the facts which were agreed to between the owners and the attorney for the United States. (*Ibid.*, p. 9:)

"1. That the steamboat Daniel Ball is a vessel propelled by steam, and is of about one hundred and twenty-three tons burden.

"2. That at the time of filing the libel in this cause the said steamboat was not enrolled and licensed for the coasting trade.

"3. That said steamboat was employed in the navigation of Grand river, between the cities of Grand Rapids and Grand Haven, both ports and places within the State of Michigan; and was so constructed as to draw but about two feet of water; and was incapable of navigating the waters of Lake Michigan, or of continuing her voyage farther than said city of Grand Haven, in said State of Michigan.

"4. That said steamboat receives goods, wares, and

merchandise at said city of Grand Rapids, to be delivered by her at places on said river and at Grand Haven aforesaid, and that all of her cargo is unloaded at or before arriving at Grand Haven, her place of destination. That a part of said goods, wares, and merchandise, so as aforesaid shipped on said steamboat, are destined and marked for ports and places in States other than the State of Michigan The said last-mentioned goods are delivered at Grand Haven aforesaid to the warehouse and forwarding agent to whom they are consigned.

"That said steamboat receives goods, wares, and merchandise at Grand Haven from warehousemen, a portion of which come from ports and places in States other than the State of Michigan, and destined for places within said State of Michigan.

"That said steamboat is a common carrier on Grand river, between the city of Grand Rapids aforesaid and said city of Grand Haven. That said steamboat does not run in connection with or in continuation of any line of steamboats or vessels on the lakes, or with any line of railway in said State.

"That there are various lines of steamboats and vessels running from ports and places in other States to the port of Grand Haven, and carrying goods, wares, and merchandise. That the Detroit and Milwaukee railroad runs from Detroit to Grand Haven, touching at Grand Rapids and other places between Grand Rapids and Grand Haven.

"That said steamboat carries passengers solely and only from Grand Haven and Grand Rapids, and the landings on said river between said places, all in the State of Michigan."

ARGUMENT.

Upon the facts and pleadings in this case but two questions arise:

1. Whether the steamer was, at the period referred to, engaged in transporting merchandise and passengers on *navigable waters of the United States*, within the meaning of the statutes above mentioned.

2. Whether those statutes are applicable to a steamer while thus engaged as a common carrier between ports and places in the same State, but where part of the merchandise shipped thereon is destined for ports and places in other States, or where it comes from ports and places in other States and is destined for places within such State, though the steamer does not run in connection with or in continuation of any line of steamboats or vessels, or any railway line, leading to or from ports and places in other States.

I It may be regarded as settled by this court that the common-law doctrine as to the navigability of waters has no application in this country; that the fact of navigableness does in no respect depend upon the ebb and flow of the tide, but that the true rule is the *navigable capacity* of the stream.

The Genesee Chief, 12 How., 457.
The Magnolia, 20 How., 296.
Hine *vs.* Trever, 4 Wall., 555.

The general current of decisions by the State courts

is in the same direction, the prominent idea being that it is navigability in fact which constitutes navigability in law.

Accordingly, it has been held by the supreme court of Iowa that the Mississippi is a navigable river. McManus *vs.* Carmichael, 3 Clarke, 1.

So by the court of appeals of New York, that the Mohawk is a navigable stream. People *vs.* Canal Appraisers, 33 N. Y., 461.

So in Pennsylvania, that the Monongahela, Schuylkill, Youghioghany, Towanda, Delaware, and Lehigh rivers are navigable. Monongahela Bridge Co. *vs.* Kirk, 46 Penn. St., 112; Flanagan *vs.* Philadelphia, 42 Penn. St., 230; Barclay Road *vs.* Ingham, 36 Penn. St., 200; McKeen *vs.* Del. Div. Co., 49 Penn. St., 424.

So in Wisconsin, the Rock and Fox rivers in that State are held to be navigable streams. Wood *vs.* Hustis, 17 Wis., 417; Harrington *vs.* Edwards, *ibid.*, 586; Cobb *vs.* Smith, 16 Wis, 661.

See also, to the same effect, Cates *vs.* Waddington, 1 McCord, (S. C.,) 580; Elder *vs.* Burns, 6 Humph., (Tenn.,) 358; Bullock *vs.* Wilson, 2 Port., (Ala.,) 436; State *vs.* Bell, 5 Port., (Ala.,) 379; Wilson *vs.* Forbes, 2 Dev., (N. C.,) 30; Collins *vs.* Benbury, 3 Ird., (N. C.,) 277; Ingraham *vs.* Threadgill, 3 Dev., (N. C.,) 59; also, 6 Cal., 443; 2 Swan, (Tenn.,) 9.

Upon the ruling of the cases above cited, both State and Federal, it is clear that Grand river, on which the steamer Daniel Ball was employed, is a navigable stream

from its junction with Lake Michigan as far up at least as Grand Rapids; since, from the admitted facts in this case, the stream was capable of bearing a steamboat of 123 tons burden, laden with merchandise and passengers, to that point; and, moreover, it was remarked by the district judge, in this same case, that "vessels from Chicago and other lake ports can navigate for miles up this river, and river steamers run daily forty miles up this stream."

But in order to be considered a navigable water of the United States, within the meaning of the statutes referred to, it is conceded, for the purpose of the argument, that the stream must not only be navigable, but also be one over which commerce is or may be carried on between different States or with foreign nations; inasmuch as those statutes seem to be founded upon Art. 1, Sec. 8, of the Constitution, conferring upon Congress power "to regulate commerce with foreign nations and among the several States," (see U. S. *vs.* Steamboat James Morrison, 1 Newb., 241; also, Gray *vs.* Clinton Bridge, 16 Am. Law Reg., 152,) and should be construed to be only coextensive therewith. Yet it sufficiently appears, from the facts in the case, that goods, wares, and merchandise, destined and marked for ports and places in States other than that in which they were shipped, have been transported over Grand river, thus making that river, in reality, a channel of inter-State commerce; and this, in connection with the further circumstance that the stream leads directly into one of

the great lakes, and is both accessible to and navigable by vessels arriving from ports and places in other States, must be deemed conclusive as to its character, and to fairly bring it within the statutory description of a navigable water of the United States.

The fact that the river lies wholly within the territorial limits of a single State is immaterial; this court having already held, in regard to the first of the statutes mentioned, that it is in all its provisions "obligatory upon the owners and masters of steamers navigating the waters of the United States, whether navigating on waters *within a State*, or *between States*, or waters running *from one State into another State*, or on the coast of the United States between the ports of the same State or different States."

Waring *vs.* Clarke, 5 How., 441.

And in speaking of the extent of the commercial power granted to Congress in the Constitution, it was more recently observed by this court, that "the power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie," and that "for this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress."

Gilman *vs.* Philadelphia, 3 Wall., 713.

II. As to the applicability of the above-mentioned

statutes to steamboats engaged in the transportation of merchandise and passengers on navigable waters of the United States *between ports and places of the same State*, it must be conceded that if the commerce in which such vessels are employed, or any part thereof, is properly commerce among the several States, then that alone is sufficient to bring them under the operation of those laws.

Commerce among the States does not stop at a State line. Coming from abroad, it penetrates wherever it can find navigable waters reaching from without into the interior, and may follow them up as far as navigation is practicable.

Gilman *vs.* Philadelphia, *supra.*

So, on the other hand, coming from the interior of a State, it goes wherever it can find navigable waters reaching from within such State into the boundaries of other States, and may follow them there as far as navigation is practicable.

When a commoditity has commenced to move as an article of trade or traffic between a place in one State and a place in another State, it denotes commerce between the States, and the means employed in moving it from place to place, over every part of the entire line, is an employment in that commerce. The circumstance that several agencies or instruments are employed, some without and some altogether within a State, does not make it the less commerce among the several States Thus, in the case of the United States *vs.* Steamboat

James Morrison, cited above, the court observes in connection with this subject:

"The coasting trade is a part of the commerce among the several States; and it is not the less a part of that commerce because the vessel navigates only from port to port in the same States, up and down a navigable river of the United States, and never goes beyond the State boundary. This will appear more plain upon looking at the course of trade in the United States upon its great navigable rivers. Goods are purchased at Philadelphia, are brought to Pittsburgh, and there shipped. These goods come from parts beyond seas, or were manufactured in the United States, and were intended for sale in Mexico, or at Independence, or other places in this State. But the boat in which they are shipped only goes as far as St. Louis. There the goods are reshipped on boats more suitable for the Missouri, and are, in that boat, conveyed to Independence. * * If intended for the valley of the Osage, they are landed at the mouth of that river, and reshipped on boats more suitable to its navigation than those ordinarily navigating the Missouri. The same observations may be made in regard to goods or Southern produce from New Orleans. Very few boats engaged in the trade between that place and St. Louis ascend the Missouri, and very few that ascend the Missouri ascend the Osage river. These remarks will also apply to nearly all the navigation of the valley of the Mississippi, and will apply as well to boats that carry off the produce of the country as those which bring merchandise. The boats that navigate the Missouri and Osage rivers seldom go beyond the limits of the State of Missouri; and yet they are as much and as altogether employed in commerce and navigation among the several States as if they made voyages beyond the limits of the State."

Now it appears among the admitted facts of this case, that part of the merchandise shipped on the Daniel Ball, and by her transported from Grand Rapids to Grand Haven, was destined and marked for ports and places in other States than the State of Michigan; and it also appears that part of the merchandise received by her on her return voyages came from ports and places in other States than the State of Michigan, and was destined to places within the latter State. So far, then, it is submitted, she was employed as an instrument of inter-State commerce. For though the carriage between the places named was internal, yet the commodity carried was proceeding to or from other States, and such other States, as well as the State of Michigan, were interested in the transportation thereof. As an article of export or of import from or to each other, those States were equally concerned in the traffic or exchange of the commodity, and thus that traffic was, in all essential respects, commerce among them.

The circumstance that the freight of the steamer destined for ports and places in other States was delivered at the warehouse of a forwarding agent at Grand Haven, to whom it was consigned, or that the freight which came from ports and places in other States was received by her from warehousemen at the same point, did not alter the character of the commerce. That was nothing more than the ordinary course of trade where a transshipment of freight takes place; and it is obvious that a transshipment at the border of a State into

or from which the commodity is shipped cannot change what was previously commerce among States into State commerce simply. If the voyage, though commenced and ended within a State, is *a continuation of the transportation of freight from one State to another*, it forms a link in commerce among States, and the vessel so engaged is subject to the navigation laws referred to.

III. It is accordingly submitted that the decree of the court below was correct, and should be affirmed.

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Attorney General.